



International Convention on the Elimination of All Forms of Racial Discrimination

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Summary record of the 1646th meeting

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Chairperson: Mr. Yutzis

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The meeting was called to order at 3.05 p.m.

Organizational and other matters

Declarations and reservations made by the States parties to the International Convention on the Elimination of All Forms of Racial Discrimination [Declarations and reservations made by the States parties to the International Convention on the Elimination of All Forms of Racial Discrimination (CERD/C/65/Misc.16), document distributed in the meeting room in English only; Preliminary Opinion of the Committee on the Elimination of Racial Discrimination on the issue of reservations to treaties on human rights (CERD/C/Misc.20/Rev.3), document distributed in the meeting room in English only]

1. **Mr. Sicilianos** said that the International Law Commission had invited the Committee on the Elimination of Racial Discrimination, as well as other United Nations treaty bodies, to transmit to it their views on the issue of reservations to conventions and treaties. The working document on the practices of the Committee, which was purely factual in nature, was meant to assist the Commission in preparing new guidelines on reservations. The Committee was not being asked to draft a general recommendation on reservations but simply to cooperate with other United Nations bodies.
2. The first part of document CERD/C/65/Misc.16, which had been prepared by the Secretariat and which the Committee was invited to consider, concerned article 20 of the Convention, which set forth the admissibility criteria for reservations and resolved both the issue of objections to reservations and that of the validity of such reservations. All the reservations that had been made thus far were, *stricto sensu*, valid and applicable.
3. The second part of the document presented an overview of the types of reservations that could be made to the Convention. Some reservations, rather than focusing on substantive articles of the Convention, had a political tone. Others dated back to the era of colonization and had been maintained by the States concerned after independence, but were now no longer relevant. The most frequent reservations concerned articles 4 and 5 of the Convention; however, in those cases, it was more a matter of interpretive declarations than actual reservations. Several reservations concerned particular provisions or even specific aspects of articles. There were, nevertheless, some general reservations which aimed at limiting the scope of the obligations contracted in order to align them with less restrictive norms in effect under domestic law, and which were based either on the constitution, or on other value systems including those associated with religious beliefs, such as the Shari'a. According to one State party, the right to make reservations was practically unlimited.
4. The third part of the document concerned the Committee's practices. Problems with regard to reservations rarely arose during the examination of periodic reports; the Committee adopted a flexible and non-conflictual attitude towards States parties, just as the Human Rights Committee did. It regularly raised questions about matters relating to reservations and States parties were usually willing to answer. Countries frequently attempted to convince the Committee that their legislation was in harmony with the Convention, despite their reservations. The Committee also made recommendations on matters to which the reservations related, and did not hesitate to take a critical stand on those reservations.
5. The issue of reservations hardly ever arose in the case of communications received from individuals since States parties that had made reservations had generally not made the declaration under article 14 of the Convention.
6. **Mr. Valencia Rodríguez** said that the Committee must continue to draw the attention of States parties to reservations that it deemed incompatible with the object and

purpose of the Convention. In view of the rapid developments in international law and the profound economic, social and political changes at the global level, many reservations to the Convention were no longer relevant, which meant that the Committee should continue asking States parties to withdraw them. The Committee did not, however, have the authority to modify the provisions of the Convention — in that particular case, those under article 20 — and only States that had made reservations were competent to withdraw them.

7. He proposed that the General Assembly should request the International Court of Justice to issue an advisory opinion on how treaty bodies, the Commission on Human Rights, States parties and the General Assembly itself should proceed in that regard.

8. **Mr. Thornberry** observed that accepting reservations made by States parties was undoubtedly the price that must be paid to encourage States to become partners in the international human rights system. The Committee should continue to draw the attention of States parties to reservations that it considered incompatible with the object of the Convention, while pursuing its focus on dialogue and persuasion, which were more effective than confrontation.

9. **Mr. Herndl** said that at the time of the examination of their periodic report, States parties rarely invoked reservations as grounds for not having taken some of the measures recommended by the Committee. The Committee had always made dialogue a priority, and should continue to do so in order to encourage States parties to withdraw reservations that it considered unreasonable or incompatible with the object and purpose of the Convention.

10. Mr. Sicilianos had addressed an important point since general reservations tended to limit the scope of the obligations contracted in order to align them with less restrictive norms in effect under domestic law, and were based on a different value system. Saudi Arabia had made that type of reservation on the grounds of needing to harmonize its laws with the Shari'a.

11. The Committee must place the stress on dialogue, rather than confrontation, with States parties to encourage them to promote the full and effective application of the Convention.

12. **Mr. Amir** said that a State that had signed and ratified an international human rights instrument and made a reservation concerning one of its provisions could have valid reasons for doing so, whether they were political, legal, cultural or religious. It was important, therefore, to address the issue of reservations with the appropriate prudence and flexibility.

13. **Mr. de Gouttes** agreed with Mr. Sicilianos' analysis of article 20, paragraph 2 of the Convention. That article had two aspects: first, it was based on the regime established under the Vienna Convention regarding the criterion of the compatibility of reservations with the object and purpose of the Convention; secondly, it prohibited any reservation the effect of which would inhibit the operation of any of the bodies established by the Convention, and laid down the rule that two thirds of the States parties must object to it in order for a reservation to be declared impermissible.

14. The Committee had two options for dealing with reservations that it considered criticisable or questionable: the first was to apply article 20, paragraph 2 literally and obtain a majority of two thirds of the States parties in order to declare the reservation impermissible; the second was to engage in dialogue with the State concerned.

15. The majority of at least two thirds of the States parties to the Convention required to invalidate a reservation had never been reached; the Committee could, however, offer to the State party concerned, as a gesture of cooperation, recommendations and suggestions regarding the reservation that appeared to be giving rise to difficulties, either during its examination of the periodic reports, or during its consideration of individual

communications submitted under article 14 of the Convention. The Committee had already provided assistance of that kind several times to certain States parties. Indeed, it considered that practice to be the best way to attain the basic objective of its mandate, namely to promote, by persuasion, the full and uniform application of the Convention.

16. **Mr. Tang** said that the Committee had established a practice for dealing with reservations that had always proved useful and effective. It should continue to emphasize dialogue and flexibility when working with States parties and not condemn those that had made reservations to an article or a provision of the Convention. He endorsed the spirit of the working document on reservations before the Committee and the approach suggested in that regard.

17. Following an exchange of views in which **Mr. Tang, Mr. Lindgren Alves, Mr. Pillai, Mr. Shahi, Mr. Avtonomov, Mr. Thornberry, Mr. Aboul-Nasr, Mr. Amir, Mr. Sicilianos** and **Ms. January-Bardill** participated, **the Chairperson** took note that document CERD/C/Misc.20/Rev.3 (Preliminary Opinion of the Committee on the Elimination of Racial Discrimination on the issue of reservations to treaties on human rights) had garnered unanimous approval and that the Committee members wished the document to be presented at the meeting with the International Law Commission as reflecting the viewpoint of the Committee as a whole.

The meeting was suspended at 5.15 p.m. and resumed at 5.30 p.m.

Reflection on the concept of multiculturalism

18. **Mr. Lindgren** said that, at a future session, the Committee might usefully give consideration to multiculturalism, an issue that frequently led to controversy during the examination of States parties' reports. It was, for example, not unusual for States to justify the absence of statistical data on the various minorities living in their territory by a desire not to make a distinction, or to discriminate, on the basis of ethnic origin. Many States parties, especially in Europe, were therefore opposed to taking account of ethnic origin during a census or for the purposes of administrative formalities.

19. The point was to determine whether countries should be urged to collect data of that nature — thereby encouraging minority group members in a particular country to highlight their difference in order to achieve fuller enjoyment of the rights enshrined in the Convention — or to remove that question from administrative forms in order to prevent discrimination.

20. He proposed that the Committee members should exchange views on that issue in the near future. That could lead in the end to the elaboration of a general recommendation which would present the Committee's position on the matter and could provide guidance to States parties in that area.

21. *The proposal was approved.*

Possibility of drafting a general recommendation on racial discrimination and the administration of criminal justice

22. **Mr. de Gouttes** said that the International Commission of Jurists had, in a letter dated 9 July 2004, invited the Committee to study the possibility of preparing a general recommendation on racial discrimination and the administration of criminal justice. The Commission had pointed out that while the issue continued to give rise to genuine concern worldwide, international law possessed only a few norms pertaining to it; it had regretted that existing recommendations and jurisprudence were too sparse to provide an overview of the issue; and it had concluded that such principles should clearly be drafted and adopted

within the framework of the International Convention on the Elimination of All Forms of Racial Discrimination.

23. The Open Society Justice Initiative, a non-governmental organization, had also invited the Committee to consider that matter. He therefore asked the Committee members if they wished to examine the issue with a view to the elaboration of a general recommendation. If that were the case, he would draw up a preliminary draft as part of a three-stage process.

24. Initially, the Committee should seek to make an inventory of all cases worldwide of discrimination in the administration of justice against persons belonging to ethnic or racial minorities, immigrants, refugees, foreigners or other vulnerable groups at risk of exclusion. During the second stage, the Committee should focus on discrimination against individuals on trial and discrimination within the judiciary against victims of racist acts. During the third stage, the focus would be on structural indicators, including the dearth of information and data on racist offences, the abnormally high rate of delinquency and incarceration among racial and ethnic minorities and the inadequate training of judicial personnel and other law enforcement agents, and, accordingly, on underscoring the need to provide training in tolerance, respect for human rights, interracial understanding and multiculturalism.

25. *The proposal was approved.*

The meeting rose at 6.05 p.m.